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DENNIS P. IAVARONE, CLERK
US DISTRICT COURT, EDNC
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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

S. GREGORY HAYS, Receiver for Mobile Billboards of America, Inc., California Mobile Billboards, et al., **Plaintiff,** **vs.** **PAUL, HASTINGS, JANOFSKY, AND WALKER, LLP,** **Defendant.**	**Case No. 1:06-cv-754-CAP** **(Pending in the United States District Court For the Northern District of Georgia, Atlanta Division)** 5:07-mc-37

MOTION TO STAY, MOTION FOR PROTECTIVE ORDER, AND MOTION TO QUASH SUBPOENA DELIVERED TO NON-PARTY MICHAEL LOMAS

Pursuant to Federal Rules of Civil Procedure 26, 30, and 45 and Local Civil Rule 7.1, EDNC, non-party, Michael Lomas ("Lomas") respectfully moves the Court to quash the subpoena issued from the United States District Court, Eastern District of North Carolina that was delivered to Mr. Lomas through the undersigned counsel on July 28, 2007. This subpoena stems from a civil case that is pending in Federal District Court in Atlanta Georgia and seeks to compel Mr. Lomas to produce documents by August 3, 2007, and to appear for a deposition on August 13, 2007.

Mobile Billboards of America, inc., California Mobile Billboards, et ... Janofsky and Walker, LLP Doc. 1

Mr. Lomas respectfully requests this Court: (1) to quash the subpoena; (2) to grant a protective order that the requested production of documents and the deposition not be allowed; and (3) to stay the requested production and deposition until this Court rules on the Motion for a Protective Order and the Motion to Quash. A copy of the subpoena in question is attached as **Exhibit A**.

SCANNED

Mr. Lomas should not be required to produce documents or appear for the deposition in this civil case because he is currently an indicted Defendant in a criminal matter that is related to the topic of the civil case in which the subpoena is issued. Further, Mr. Lomas has (until this morning when he was moved to Cavalcorp halfway house) has been incarcerated since May 2007 and has been determined indigent by the Court in the Eastern District of North Carolina. Under the circumstances as they currently exist, notice of Mr. Lomas's deposition and request for production of documents is not reasonable and compliance would be an undue burden.

In support of this Motion, Mr. Lomas shows this Court:

1. Mr. Lomas was a part owner of a business from the late 1990s through 2004.

2. Mr. Lomas's business sought legal advice from Paul Hastings, Janofsky, and Walker LLP (the Defendant in the civil case in which this subpoena is issued).

3. In 2004, the SEC began an investigation of Mr. Lomas's business and, subsequently, filed a civil action against Mr. Lomas and his business – Case No. 1:04-cv-2763, United States District Court of Georgia, Atlanta Division (the "SEC Civil Case").

4. In the SEC Civil Case against Mr. Lomas's business, a receiver was appointed.

5. The receiver subsequently filed an action against Paul Hastings – Case No. 1:06-cv-0754 CAP, United States District Court of Georgia, Atlanta Division (the "Receiver Civil Case").

6. Subsequent to the filing of the above referenced civil actions, a criminal indictment was issued against Mr. Lomas in the Eastern District of North Carolina – Case No. 5:07-cr-117-1BR (the "Criminal Case").

7. Pursuant to the criminal indictment, Mr. Lomas appeared for an initial appearance in May of 2007, and he was detained at that time.

8. Mr. Lomas's detention order was modified to allow his release to the Cavalcorp halfway house in the Eastern of District of North Carolina.

9. This morning, Mr. Lomas was transported from the Wake County Jail in Raleigh, North Carolina to the Cavalcorp halfway house. This is the first time since mid-May that Mr. Lomas has not been incarcerated.

10. This Court has determined that Mr. Lomas is indigent and undersigned counsel has been appointed to represent Mr. Lomas in the EDNC Criminal Case. **[DE 68]** Undersigned counsel has not made an appearance in any of the above described civil cases and files this ancillary motion to protect Mr. Lomas's interest in the EDNC Criminal Case.

11. Undersigned was contacted by an attorney representing Paul Hastings in the Receiver Civil Case to request that Mr. Lomas appear for a deposition in that matter. At that time, the undersigned informed the attorney for Paul Hastings that he would recommend to Mr. Lomas that Mr. Lomas not give deposition testimony in a civil matter prior to the resolution of his criminal case. Undersigned conferred with the requesting party in good faith and attempted to resolve the dispute without court action.

12. Nevertheless, attorneys for Paul Hastings have sent a subpoena requesting document production and Mr. Lomas's appearance at a deposition.

13. Therefore, undersigned respectfully requests the Court enter an Order to protect Mr. Lomas from any requirement that he produce documents in any civil case or appear for a deposition in any civil case where the factual issues are related in any way to the issues in the pending criminal matter.

14. Mr. Lomas has served a written objection pursuant to Rule 45(c)(2)(B) to the attorneys issuing the subpoena. A copy of this written objection is attached as **Exhibit B**.

15. Pursuant to Rule 45(c)(3)(A)(iv), compliance with the subpoena would be an undue burden on Mr. Lomas because: (a) during his incarceration and now while he is at the halfway house, Mr. Lomas has no information that is readily accessible to him; (b) he is indigent and has no financial means to acquire any of the requested information; (c) any documentation that Mr. Lomas may have had relating to the Receiver Civil Case action, he has long ago turned over to the receiver and, therefore, attorneys for Paul Hastings may acquire the information it seeks from the Plaintiff - Receiver in the Receiver Civil Case.

16. The undersigned and Mr. Lomas have satisfied the requirements of Federal Rule 26(c) and attempted in good faith to resolve this discovery dispute without court action.

WHEREFORE, Mr. Lomas prays this court to issue:

1. An Order quashing a subpoena issued to him by Paul Hastings in the civil receiver matter that is dated July 27, 2007; and
2. Issue a protective order prohibiting further requests to him to produce documents and to appear at depositions in civil matters where the factual topics are related in anyway to the ongoing criminal case in the Eastern District of North Carolina.

Dated: August 2, 2007.

/s/ Stephen W. Petersen
Stephen W. Petersen
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Attorney for Michael A. Lomas

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2007, I served the foregoing MOTION TO STAY, MOTION FOR PROTECTIVE ORDER, and MOTION TO QUASH SUBPOENA DELIVERED TO NON-PARTY MICHAEL LOMAS via facsimile, email attachment, and U.S. Mail to the parties listed below.

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Dated: August 2, 2007.

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